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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

WPVG, INC.

For Renewal of License
for Station WPVG(AM)
Funkstown, Maryland

) MM Docket No. 96-117

) File No. BR-950601VH

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To: Administrative Law Judge
Arthur I. Steinberg

MASS MEDIA BUREAU'S COMMENTS TO
MOTION FOR SUMMARY DECISION

1. On August 15, 1996, WPVG, Inc. ("WPVG") filed its Motion for Summary Decision in this proceeding. The Mass Media Bureau ("Bureau") hereby files comments in support of WPVG's motion.

2. WPVG seeks to resolve the following issues in order to demonstrate that grant of its license renewal application is warranted: that it has the capability and intent to expeditiously resume the broadcast operations of Station WPVG, Funkstown, Maryland, consistent with the Commission's Rules; that it has not violated Sections 73.1740 and/or 73.1750 of the Commission's Rules; and that, in light of the evidence adduced pursuant to the preceding issues, that grant of the subject license renewal application would serve the public interest, convenience and necessity. *See Hearing Designation Order* in MM Docket No.96-117, DA 96-814, released May 22, 1996 ("HDO").

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3. Pursuant to Section 1.251 of the Commission's Rules, to warrant summary decision, a party must show that there is no genuine issue of fact for determination at the hearing. To sustain a motion for summary decision, it must be established that "the truth is clear," that "the basic facts are undisputed," and that "the parties are not in disagreement regarding material factual inferences that may be properly drawn from such facts." *Big Country Radio, Inc.*, 50 FCC 2d 967 (Rev. Bd. 1975). The Bureau agrees that the facts, and the legal significance of those facts, are not in dispute, and that summary decision in favor of the renewal applicant is appropriate.

4. To meet the specified issues, WPVG asserts that the factual basis for the issuance of the *HDO* is in error. It states that the *HDO* rests on two erroneous assumptions, *to wit*, that neither an application to relocate the station's transmitting antenna nor a request for authority to remain silent had been filed prior to the issuance of the *HDO*. However, as WPVG points out, an application for a new transmitter site was filed on April 18, 1996, and accepted for filing by Public Notice issued on May 13, 1996, prior to the adoption of the *HDO* on May 22, 1996. The filing of that application for a new transmitter site, in WPVG's view, evidences that it has been diligent in seeking to restore the station to the air promptly. In addition, WPVG asserts that the cover letter accompanying its modification application stated that the station was off the air, and would remain off the air, until after the station was built. WPVG claims that although it did not expressly request an extension of the temporary authority for the station to remain silent, it clearly noted that additional time would be necessary to restore service. Thus, WPVG suggests, its failure to seek that additional

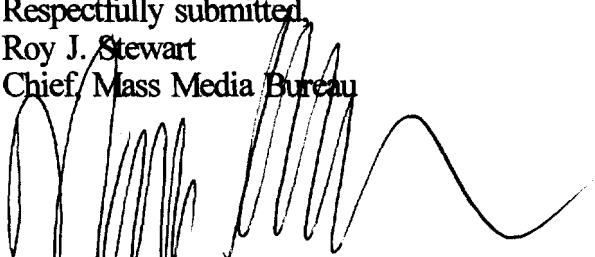
authority does not evidence an abandonment of the intention to reconstruct the station and resume operations and should not be viewed, under these circumstances, as an independent ground for denial of license renewal.

5. Discussion. The Bureau supports the Motion for Summary Decision. As the facts indicate, WPVG filed an application to relocate the station's transmitting antenna prior to the adoption of the *HDO*. By doing so, WPVG has demonstrated that it has the capability and intent to expeditiously resume broadcast operations. Thus, WPVG has met its burden with respect to Issue 1 of the *HDO*. Moreover, because WPVG filed its modification application prior to the adoption of the *HDO*, it is clear that WPVG is not in violation of Section 73.1750 of the Rules with respect to permanent discontinuance of operations. Finally, although WPVG concedes apparent violation of Section 73.1740 of the Rules with respect to seeking additional time to remain silent, this fact alone does not merit denial of renewal in this case. Moreover, in light of the licensee's remedial action (*i.e.*, the filing of its application for a new transmitter site) prior to the designation of its renewal application for hearing, the Bureau believes that a monetary forfeiture is not warranted in this case.

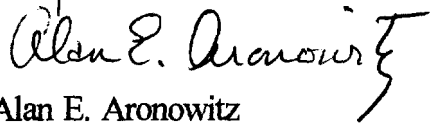
6. In sum, the Bureau supports WPVG's request that the Presiding Judge grant its

Motion for Summary Decision, grant WPVG's renewal application,¹ and terminate this proceeding.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau



Norman Goldstein
Chief, Complaints &
Political Programming Branch



Alan E. Aronowitz
Attorney
Mass Media Bureau

Federal Communications Commission
2025 M Street, N.W.
Suite 7212
Washington, D.C. 20554
(202) 418-1430

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¹ In this regard, the Bureau notes that WPVG recognizes that under Section 312(g) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §312(g), it must return the station to the air by February 8, 1997, or face automatic license expiration as a matter of law. In light of this fact, the Bureau urges that the renewal grant be conditioned upon the completion of construction by February 8, 1997.

CERTIFICATE OF SERVICE

Talya Lewis, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 26th day of August 1996, sent by regular United States mail, U.S. Government frank, copies of the foregoing "**Mass Media Bureau's Comments to Motion for Summary Decision**" to:

WPVG, Inc.
c/o Roy F. Perkins Esq.
1724 Whitewood Lane
Herndon, Virginia 20170


Talya Lewis